Law Offices of Gregory J. Vogt, PLLC

103 BLACK MOUNTAIN AVE.
SUITE 11
BLACK MOUNTAIN, NC 28711

www.vogtlawfirm.com

Gregory J. Vogt
828.669.2099 (office)
gvogt@vogtlawfirm.com

September 28, 2016

EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Tri-County Telephone Association, Inc., Petition for Waiver of Accounting Rules, WC Docket No. 08-239.

Dear Ms. Dortch:

On September 26, 2016, Don Jackson of Tri-County Telephone Association, Inc. ("TCT") and I had a telephone conversation with Pamela Arluk, Victoria Goldberg, John Hunter, and Douglas Slotten, all of the Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, in the above-captioned matter.

TCT indicated that a prompt grant of the TCT waiver filed in the above-captioned proceeding was crucial in meeting the deadlines outlined by the Commission in *Connect America Fund,* WC Docket No. 10-90, *et al.*, FCC 16-33 (rel. Mar. 30, 2016) ("*Connect America Fund ROR Order*"). TCT requests that the waiver be granted promptly so that TCT can accurately project its BLS revenue requirement as a member of the National Exchange Carrier Association ("NECA") common line pool.

As indicated in the waiver petition, TCT mistakenly began offering Digital Subscriber Line ("DSL")-based Internet service as a deregulated service in the year 2000. In determining the appropriate accounting treatment for the unregulated investment associated with DSL loop investment, TCT excluded from regulated ratebase a significant portion of such loop investment for broadband-only lines, as detailed in a previous ex parte letter.[1]

[1] Letter form Gregory J. Vogt to Marlene H. Dortch, WC Docket No. 08-239 (dated Oct. 30, 2015).

The waiver requests restoring the excluded loop investment to regulated accounts consistent with TCT's business and regulatory practice since 2010 of offering DSL on a regulated, detariffed basis. Specifically, since 2010 TCT has been paying USF assessments as if the DSL service were offered on a regulated, but detariffed basis. Notwithstanding this good faith payment of assessments, TCT has been unfairly deprived of USF because of its inability to include the excluded loop investment in regulated accounts. Grant of the waiver would correct this situation.

In the *Connect America Fund ROR Order* the Commission reformed USF to support broadband services to provide rate-of-return carriers with the option of selecting broadband USF support based on a cost model or to create a new Part 69 Broadband Loop Service ("BLS") category based on costs previously included as traffic-sensitive costs. By creating this new broadband support, the FCC stated that it was "eager to see that support results in more widespread deployment [of broadband]." *Id*. at ¶ 168.

The *Order* indicates that the BLS category upon which CAF-BLS support is based, will be implemented on December 31, 2016. *Id*. at ¶ 187. In preparation for the BLS implementation deadline, TCT received correspondence from NECA during the week of September 19, 2016 requesting that the company provide by September 30, 2015, projections for the calendar year 2017 of TCT's revenue requirement for the BLS category, among other things. In order for the company to accurately project its BLS revenue requirement, a portion of which would be made up of now unregulated costs absent the requested waiver, the company must know promptly whether its waiver will be granted.

Also on December 31, 2016, a new capital expense limit will be imposed on investment used to compute both high cost loop support ("HCLS") and CAF-BLS based on actual deployment of qualified broadband. The amount of CAF-BLS support (based on the investment in the BLS category) will be used to develop deployment obligations. *Id*. at ¶ 168. Accurate CAF-BLS support for TCT will allow the Commission to impose more challenging deployment obligations pursuant to the terms of the *Order*.

Because the level of HCLS and BLS will both be affected by the amount of loop investment during the calendar year 2017, it is crucial for the FCC to permit TCT to utilize the correct loop investment figures for DSL services effective as of that date. Loop investment accounts should therefore include amounts that are currently being excluded because of TCT's earlier erroneous deregulation of DSL and consequent reclassification of loop investment as unregulated investment.

The timing of granting the waiver is crucial for four reasons. First, the modest increase in USF occasioned by grant of the waiver is necessary to meet the

Commission's goal stated in the *Connect America Fund ROR Order* of expanding broadband deployment to all Americans in rural areas, including in TCT's service territory. Second, correcting the USF support amounts at the implementation date would be more efficient and less burdensome for the Commission, which must oversee implementation of the BLS category for NECA common line pool members and ensure that the overall USF support is within budget. *See id.* at ¶ 149. Third, correcting the loop investment accounts would be more efficient and less burdensome for TCT by allowing it to make all accounting changes impacting DSL and associated USF support at the same time. Fourth, prompt grant of the waiver would place TCT in the same position as other rural rate-of-return carriers that are implementing the *Connect America Fund ROR Order* and offering DSL pursuant to permissive detariffing authority pursuant to FCC rules.

Pursuant to 47 C.F.R. § 1.1206, please include this ex parte filing in the above-referenced docket.

Sincerely,

/s/ Gregory J. Vogt

Gregory J. Vogt
Counsel for Tri-County Telephone Association, Inc.

cc: Pamela Arluk
Victoria Goldberg
John Hunter
Douglas Slotten